

**WOODSTOCK PLANNING & ZONING COMMISSION
SPECIAL MONTHLY MEETING
THURSDAY, APRIL 2, 2015, 7:30 P.M.
WOODSTOCK TOWN HALL, MEETING ROOM 1**

MINUTES

I. SPECIAL MEETING AT 7:30 P.M.

a. Call to Order at 7:31 p.m.

b. Roll call – Doug Porter, Syd Blodgett, Dexter Young, Fred Rich, Dorothy Durst, Joseph Adiletta, Gail Dickinson, Jeff Gordon, Delia Fey

Also present: Robert DeCrescenzo, Town Attorney

II. DESIGNATION OF ALTERNATE – Doug Porter

III. ANNUAL LEGAL TRAINING WORKSHOP WITH ROBERT DECRESCENZO, ESQ.

The following are the questions posed and a summary of the answers:

1. Please provide a primer on Planning Commissions, Zoning Commissions, Zoning Boards of Appeals, and Inland Wetlands & Watercourses Agencies.

Planning Commission does 3 things: 1) Prepares POCD (8-23), a planning tool and not a regulatory document that is required by state law and must be updated no less than every 10 years. Zoning Regulations arise from this important planning document. 2) Reviews and issues a report on municipal improvements under General Statute Section 8-24. 3). Subdivision and resubdivision of land. Under Section 8-29, Planning Commission will sometimes approve the layout and boundaries of public roads. Zoning Commission will establish the zoning map, writes the zoning regulations and administers the zoning regulations primarily through site plan or special permit or special exception. Zoning Commission will approve zone changes and map amendments.

ZBA is responsible for varying the application of the zoning regulations and they will hear and act upon appeals of the actions of the ZEO and can overturn the actions of the ZEO. Also, ZBA will approve locations of certain types of uses like gas stations. IWWA administers the Inland Wetlands regulated areas in the town by CT General Statute. If ZBA makes a decision, it is appealable through the Superior Court. It is very difficult to claim a hardship for a sign. Any expansion of a building is also difficult because when the property is purchased on a non-conforming lot and the owner has knowledge of it, it is considered self-created. Variances in CT, if construed by the letter of the law, should be very difficult to obtain.

With separate Planning & Zoning Commissions in some towns, sometimes the rules for subdivision do not apply to zoning and vice versa. For instance, subdivision regulations do allow for certain types of waivers and there is no such power in the zoning regulations, no authority. Subdivision regulations are subject to the zoning regulations and you cannot change a zoning requirement in the subdivision regulations.

2. Please go over FOIA in terms of what the Commission needs to know and how this applies to Subdivision/Resubdivisions and Special Permit applications, text amendments, zone changes, POCD Updates and other projects the Commission is likely to have before it.
 - a. Please explain ex-parte discussion in particular. What is it? How to avoid it?

- b. It's a small town and commission members, applicants and interested individuals often all live in town, what kinds of conversations and interactions are allowed vs. not allowed?
- c. What should PZC members do if someone calls them? Post-mails or emails them something? Corners them in the supermarket?

Ex-parte communications are those discussions amongst the Commission about the application, outside of the public hearing. For an ex-parte communication to be considered illegal, it's got to be substantive and material and not procedural in nature. This could be used in an appeal and a decision could be overturned if it could be proved that this ex-parte discussion was material to the decision made. Applications can only be discussed in a regular meeting. Responding to an e-mail could be construed as material to the application process, creating the dialogue that violates FOI. Members should be on guard with e-mail communications. Communications between staff and Chair about setting the agenda do not fall under this category and would not violate FOI. Staff is a resource to the Commission. If Commission members do their own background reviews online, for instance, and finds the information is contrary to something the applicant has told the Commission, then the applicant should be notified so that he/she can respond during the public hearing. Once the public hearing closes, the applicant has no ability to respond. Town Planner, Town Attorney, Town Engineer, staff can provide additional information but only information that pertains to what is already in the record. No one should add to the record after the PH closes.

SUBDIVISION / RESUBDIVISION / SPECIAL PERMIT

3. Some towns set criteria for when a Public Hearing is required for a Subdivision application (such as by the # of lots proposed), whereas most towns use the same wording that Woodstock uses (i.e. Subdiv Regs, Article III, Section 2, Subsection c, "*The Commission shall hold a Public Hearing on any plan of Resubdivision and may hold a Public Hearing on any Subdivision if the Commission determines that the circumstances so warrant.*"). Are there any other criteria Woodstock can use to be consistent in determining when and when not to schedule a Public Hearing for a Subdivision application?

Some towns set criteria for PH required for a subdivision application. The CT General Statutes create the minimal standards. If PZC puts the PH requirement on all subdivision applications in their regulations, then it cannot be waived.

4. In terms of Subdivision and Special Permit applications, what kinds of things can be waived and what cannot?

Waivers are defined in CT Gen Statutes. Waiver provision is intended to allow the applicant to adjust the regulations to the condition of a particular piece of land and it's almost like a variance without the hardship criteria. If it's impossible to meet a particular section of subdivision requirements, that's an appropriate waiver. Three criteria must be met. Waiving under the zoning regulations can be tricky. Okay to waive elements of what is considered to be a completed application, but you cannot waive any of the substantive requirements of the zoning regulations. A setback is a standard and cannot be waived however under certain situations an A-2 survey could be waived because that falls under the application requirements. Commission members are allowed to familiarize themselves with property location during the application process without a formal site walk or public hearing. This visit should be by appointment and if more than one Commission member is present, then it must be noticed as a special meeting. Most applicants will grant consent for Commissioners to enter the property.

5. Do the CGS allow for PZC to require Non- Water Supply, Wastewater and Water Tanks/Cisterns/Sprinklers as a condition of approval on non-residential or non-subdivision approvals? *The town has an obligation to protect against fire hazards in town and cisterns and water tanks are more and more common especially in larger subdivisions. The issue of requiring sprinklers falls under the building code and should not be addressed by PZC. It is improper to shift the burden of a fire suppression system that should be maintained by the public entity to the private property owner. A recent case with the maintenance of sidewalks was decided and the Court was very clear that you can if and only if you have an ordinance that is specifically authorized by CT Gen Statutes. If it's a public duty to maintain a road, drainage system, fire suppression system, sidewalk maintenance and the like, you cannot force through the subdivision regulations that the property owner do that.*
6. How important is the dialogue and written proposal during the application presentation on a Subdivision/Resubdivision/Special Permit for long term enforcement of the approval?
 - a. Ex. There was some discussion about the PA system for the WA Bentley fields application but that wasn't the focus of the application and there were no conditions about it in the approval(s), so what to do now if they are using additional PA system or using it more/louder than what was discussed during the application? *The information presented by the applicant during the public hearing as part of the record could be enforceable and binding since the standard stipulations do state that the application is being approved based on the information presented to the Commission. It is recommended that something like this be listed as a condition of approval to avoid any loopholes. It is also recommended that any possible conditions be brought up during the public hearing so the applicant has an opportunity to respond.*
 - b. Is the application, the way it is presented verbally and in writing the extent of the application that can be enforceable in the future, following an approval? *Above answer.*
7. What updates should we include in the definition of "bond" for the Regulations? *The bond statutes have changed in the recent years. Latest language is: "To satisfy any bond or surety requirement, the commission shall accept surety bonds, cash bonds, passbook or statement savings accounts and other surety including, but not limited to, letters of credit, provided such bond or surety is in a form acceptable to the commission and the financial institution or other entity issuing any letter of credit is acceptable to the commission. Such bond or surety may, at the discretion of the person posting such bond or surety, be posted at any time before all modifications of the site plan are complete, except that the commission may require a bond or surety for erosion control prior to the commencement of any such modifications. No certificate of occupancy shall be issued before a required bond or surety is posted. For any site plan that is approved for development in phases, the surety provisions of this section shall apply as if each phase was approved as a separate site plan. Notwithstanding the provisions of any special act, municipal charter or ordinance, no commission shall require a bond or other surety to securitize the maintenance of roads, streets or other improvements associated with such site plan for maintenance occurring after such improvements have been accepted by the municipality".*
8. In a new proposed Subdivision/Resubdivision, can the PZC prohibit tree clearing or earth disturbance (except for soil analysis for perc testing) before the approval of the application? *PZC would not have the authority to regulate tree cutting but if it's put on the plan and they show what trees are being preserved, it" could" be enforceable because it would be part of the plan. Technically, the trees are the private property of the owner and isn't regulated, unless it can be*

shown that the tree cutting would cause erosion or some other detriment to the environment that carries outside of the subdivided land.

9. Can the PZC disapprove a proposed Subdivision/Resubdivision (or Special Permit application) if the proposed development is anticipated to create higher estimated traffic volume than the existing public infrastructure such as an existing road or intersection, etc., can handle off the site. Or if it is expected to be more than the school buses, emergency vehicles and drainage can handle off the site?
 - a. Is it the existing Zoning, in place when an application is submitted, that has already determined the allowed approximate density of an area and thus if an application complies with the Regulations then is it the town's responsibility to upgrade the infrastructure off-site from the proposed development?

The obligation to maintain traffic safety and roads is a public obligation of the Town and if they choose not to do that, for whatever reason, it cannot be shifted to private property owners. Same thing applies to sidewalks (Buttermilk case). Under the special permit criteria, traffic study can be considered. There are three types of approvals. Legislative (creating regulations) which is a zone change; Administrative approval (administering regulations); Quasi judicial (ZBA) which is varying the regulations. Standards become important when defending your actions and the Courts look at each type of approval very differently in terms of the latitude that you have.

10. Can an approval of a Zoning or Special Permit have conditions attached to it for certain things to be done by certain times before the approved land use activity can be done? For example, public safety items be put in place? Non-public safety items be put in place?

On a Special Permit, conditions are acceptable which relate specific to public safety because it is part of the evaluation. In general, conditions can implement the regulations and cannot add to the regulations. For example, if a condition says you have to take down a bridge near the driveway because the sight line isn't adequate for the use and you can't build on the property until the sight line is fixed, that's an example of a valid condition. It should be specific to public health and safety.

11. What kinds of improvements can be required by condition on a Subdivision or Special Permit?
 - a. Sidewalks, road widening, etc. and are these limited to within the development or can they extend outside the development? If they can extend outside the development, then how far?
 - b. What about fire safety in the form of cisterns or dry hydrants: Is it the responsibility of the applicant to put them in or to upgrade an existing deficient system or is it the responsibility of the town or fire department to put them in or to maintain water holes or to replace old hydrant fixtures with new ones to fit newer equipment?

PZC can require improvements within the subdivided land but once outside of it, there are limitations. The Town does have a statutory obligation to protect against fire hazards. Whatever is required has to pertain to the site itself. Protecting the neighborhood wouldn't be accepted, generally.

MEETING QUESTIONS

12. Site walks.

- a. Can the PZC conduct a site walk before a Public Hearing starts?

Not recommended but it can be done. Site walk should be done as part of the PH and then questions can be asked as part of the record. It can also be done as part of a preliminary discussion. The same rules do not apply pre-application.

- b. Can PZC do a site walk after the Public Hearing ends, but while deliberating about the application? *Not recommended.*

- c. How can individual Commissioners site walk the land if they cannot do so during a formally scheduled site walk or if no site walk by the PZC is scheduled? *Commissioner is entitled but should knock on the door and ask for permission or drive by and takes pictures, but they must be identified when taken and submitted during the PH. Application should contain language that allows consent for Commissioners to individually visit the property for the purposes of evaluating the application. Not required that staff (Delia) accompany the Commissioner but she should be notified.*
13. Can the PZC set a deadline for the timely submission of applications so as not to get applications the day before a meeting, at a meeting or a certain number of days before a meeting?
This is an acceptable requirement. The problem has been last minute submissions and incomplete applications, giving very little time for copies to be made and review before the meeting. Usually it is 15 days for a site plan, prior to the meeting. For PH items, it's usually 40 days because they have to be noticed. Anything going to NECCOG should be 45 days. It's really up to the Chair's discretion on whether to place on the agenda. A resolution will be filed by PZC. There is a discussion on what this resolution will include and procedural issues. There is no legal significance to the words "without prejudice" when an application is voted on. It's either approved or denied. If it's denied "without prejudice" it means they are not voting on the merits of the application, it's just being denied due to time line constraints and applicant is invited to re-apply. The statutes do not require Conservation Commission review, only the regulations do. Therefore if not complied with, it is not subject to being overturned by the Courts.

LAND USE RELATED QUESTIONS

14. If the PZC wants to find a simple or streamlined process for small business to change hands keeping the same use or type of use, add a new use, have a different change of use in an existing location, or move to a different location in town, what can be done vis-a-vis the Regulations?
- a. Table of Use Classifications?
 - b. Trigger provisions for the PZC to get involved for decision making?
 - c. Does this have to be done with the creation of a new zone or can it be done within the same 3 zones we have now?
- Change of use within an existing structure. If going from retail to retail, PZC doesn't really need to know, only D. Fey in order to keep records updated however if retail going to a bakery, then PZC will want to review the change. Attorney DeCrescenzo recommends separating uses, compiling a list of use classifications. A Special Permit goes with the land so if a new one is issued on a property does it supersede the old one or does the property owner have the right to operate under both? Unless this is stated on the record that the old is released when the new is issued, they could both be in effect. There is discussion on whether riding academies should be classified as agricultural use and taken off of the Special Permit list. This will be discussed by PZC at a later time.*
15. What process does the PZC need to follow if it were to decide to place a moratorium on medical marijuana growing and dispensing? If no moratorium is in place, if an application for medical marijuana growing or dispensing were to be submitted, can the PZC not accept or deny the application on the basis that federal law lists marijuana as an illegal substance, and Woodstock regulations do not allow illegal things to take place (i.e., federal law trumps state law)?
Medical Marijuana is considered an agricultural use although the state regulates the growing of marijuana closely. The growing of and the dispensary are two different classes. Federal law does list marijuana as a class A controlled substance however it is permitted under CT State law. A moratorium can be placed on growing and dispensing medical marijuana for a certain duration, maybe up to a year, but not sure it's necessary for Woodstock.

16. Agriculture is a Permitted Use in the Community District under the current Zoning Regulations, and we include the same definition of agriculture as was found in the statutes. When does a farm business become more than just agriculture?

Defining principal agricultural use and those uses that are accessory to are important in setting standards. There is discussion on situations when farmers are taking the tax exemptions and federal grants and then turning their facilities into a commercial use for weddings and camps. Keeping agricultural land for agricultural use is a high priority and we do not want to inadvertently regulate them out of business. PZC should be creating standards.

OTHER REGULATORY QUESTIONS

17. Some towns allow for temporary event permits. How can this be done?
Yes, this can be done. The motorcycle event is an example. This would be better under a "Special Event Ordinance." The ordinance can even allow PZC to issue these permits if authority is granted under the ordinance. Lots of towns have ordinances in place for special gathering or festivals where the town can say that a single permit can be issued for one day, specific times noted for a particular use. Durational permits for excavation are enforceable because the site plan states a certain quantity of sand and gravel and the SP allows a certain quantity to be removed and once it is exhausted, the purpose of the SP no longer exists and would expire.
18. Can a Zoning Permit or a Special Permit for an event be limited to a one-time use or for a use for a specified period of time (e.g., one or two years), after which the PZC can review the permit and determine if conditions are met or exceeded for the Special Permit to continue to be approved?
Yes.
19. Please remind the PZC about how a town can set up a noise ordinance, how such an ordinance can be enforced, and what a town does with noise regulation if it has no ordinance.
Noise ordinances are allowed subject to approval by DEEP. The town would have to have someone trained in the use of the machines that measure noise and filter out the ambient noise. It would require special training and equipment in order to enforce. This could be subcontracted out.
20. Please notify us and explain any new laws we should know about.
The MacKenzie decision should be reviewed. The Town can enforce their regulations and the reality is that they are valid until the Court says they are not. Subdivision regulation review will be starting soon and PZC has asked Attorney DeCrescenzo to inform them of how the MacKenzie decision should be applied to these amendments.
- Additional questions regarding the motorcycle event. If issued under a Special Permit, the land can forever be used for this event if the property is sold. This should fall under a temporary event and the town should have an ordinance.*

IX. ADJOURNMENT

MOTION TO ADJOURN BY FRED RICH, SECONDED BY DEXTER YOUNG AT 10:15 P.M. MOTION CARRIED UNANIMOUSLY.

Respectfully Submitted, Tina M. Lajoie, Clerk

(Note: These minutes were completed based on the audio recording only.)